

Customer No. 24498  
Attorney Docket No. PU030179  
Office Action Date: 12/29/2008

### **REMARKS**

The Non Final Office Action mailed December 23, 2008 has been reviewed and carefully considered. Reconsideration of the above-identified application, in view of the following remarks, is respectfully requested.

Applicant acknowledges with appreciation the Examiner's indication that claim 19 would be allowable if rewritten in independent form.

Claims 1-22 are pending in this application. Claims 1, 5, 12, 21 and 22 have been amended. No new matter has been added.

### **§101 REJECTIONS**

Claim 21 was rejected under 35 U.S.C. 101. The Examiner alleges that the claimed subject matter is directed to a signal. In response to the Examiner's comments, Applicant has amended claim 21 to recite, "A computer readable medium storage device storing code, which when executed by a processor, for performing the method of claim 12."

As stated in the MPEP 2106, a claimed computer-readable medium or storage device encoded with a computer program is a computer element which defines structural and functional interrelationships between the computer program and the rest of the computer which permit the computer program's functionality to be realized, and is thus statutory. See *Lowry*, 32 F.3d at 1583-84, 32 USPQ 2d at 1035. Accordingly, withdrawal of the §101 rejection of claim 21 is respectfully requested.

### **§103 REJECTIONS**

Claims 1, 4-7, 9, 12-14, and 20-22 were rejected under 35 USC 103(a) as being

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unpatentable over Fujisawa (US Pat No 7,352,726) in view of Skarica et al. (US Pat No 7,171,121, hereinafter Skarica) in view of Lemieux et al. (US Pat No 6,968,374, hereinafter Lemieux).

Applicants submit that for at least the reasons discussed below claims 1, 4-7, 9, 12-14, and 20-22 are patentably distinguishable over the teachings of the suggested combination of references.

Applicants' claim 1 now recites, *inter alia*:

"...determining a priority code associated with a data packet of said stream; establishing a channel in response to a detected presence of said priority code for communicating information in said stream of packet based digital data to a second communications network, the second communications network having a communications protocol that allows for set up and communications over discrete channels of a reserved bandwidth..."

Claim 5 now recites, *inter alia*:

"...said processor, further in communication with said second transceiver, for setting up a channel of reserved bandwidth, in response to said priority code..."

Claim 12 now essentially recites, *inter alia*:

"...determining whether said prioritized data packet requires transmission to a second device, in the second communications network, over a reserved bandwidth channel based on a priority value included in said prioritized data packet, the second communications network having a communications protocol that allows for set up and communications over discrete channels of a reserved bandwidth..."

Claim 22 now essentially recites, *inter alia*:

"...said processor further adapted for communicating with said second transceiver so as to set up a channel of reserved bandwidth in response to said priority code..."

On page 5 of the Office action it is affirmed that Fujisawa and Skarica do not disclose determining a priority code associated with the data packet and establishing a

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channel in response to the priority code for communicating information in the stream of packets based on digital data to the second network. The Examiner points to Lemieux col. 8, lines 22-25. The cited portion recites, *inter alia*:

“As mentioned previously, each of the packet flows 430 are associated with QoS requirements. Therefore, the network channels 410 are established to ensure that the QoS requirements are met. In the current example, the QoS requirements are an end-to-end delay requirement...”

Lemieux goes on to state, in Col. 8, lines 53-56:

“The QoS mechanism of the present invention uses different QoS classes 440 within the same network channel 410 in order to reach the end-to-end delay requirement associated with each packet flow.”

However, Lemieux simply generally mentions that packet flows have associated QoS requirements. It goes further to state that different QoS classes are used within the same network channel in order to meet the requirements. In Lemieux, network channels are modified to meet QoS requirements. This bears no relation to determining a priority code associated with a data packet of a data stream and then using the detected *presence* of the priority code to open a channel accordingly for the transfer of a potential stream. Indeed, there is nothing in Lemieux that teaches or suggests at least determining a priority code associated with a data packet of said stream and setting up a channel for communicating information in said stream of packet based digital data to a second communications network in response to a detected presence of the priority code, essentially as claimed in claim 1.

In Lemieux, none of the QoS requirements (listed in Col. 7, line 59 to Col. 8, line 4 of Lemieux) disclose or suggest at least the determining of a priority code.

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Moreover, neither Fujisawa, Skarica and/or Lemieux disclose or suggest at least setting up a channel of *reserved bandwidth*, in response to said priority code, which is essentially recited in independent claims 5 and 22. Furthermore, neither Fujisawa, Skarica and/or Lemieux disclose or suggest at least determining whether said prioritized data packet requires transmission to a second device, in the second communications network, over a **reserved bandwidth channel based on a priority value** included in said prioritized data packet which is essentially recited in independent claim 12.

At most, Lemieux simply generally discusses wherein network channels are established to ensure that QoS requirements are met, and that its IP network 400 could contain numerous network channels 410 and routers 420 through which packet flows 430 transit. However, Lemieux is completely silent with respect to setting up a channel of **reserved bandwidth** in response to a priority code, essentially as presently claimed in claims 5, 12 and 22.

Therefore, it is respectfully asserted that independent Claims 1, 5, 12 and 22 are patentably distinct and non-obvious over Fujisawa, Skarica and/or Lemieux for at least the reasons set forth above. Claims 4, 6-7, 9, 13-14 and 20-21 each depend from one of claims 1, 12, 12 and 22. The dependent claims include the limitations of their respective independent claims and are therefore believed to be patentable and nonobvious for at least the reasons stated for claims 1, 5, 12 and 22.

Claim 2 was rejected under 35 USC 103(a) as being unpatentable over Fujisawa in view of Skarica in view of Lemieux and further in view of Du et al. (US 6,181,947, hereinafter Du). Claims 3, 10 and 16 were rejected under 35 USC 103(a) as being unpatentable over Fujisawa in view of Skarica in view of Lemieux and further in view of

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Brewer (6,657,999). Claims 8 and 15 rejected under 35 USC 103(a) as being unpatentable over Fujisawa in view of Skarica in view of Lemieux as applied to claims 5 and 12 above, and further in view of Walke et al. (US 7,016,676, hereinafter Walke). Claim 11 was rejected under 35 USC 103(a) as being unpatentable over Fujisawa in view of Skarica in view of Lemieux as applied to claim 5 above, and further in view of Hamamoto et al. (6,038,233, hereinafter Hamamoto). Claim 17 was rejected under 35 USC 103(a) as being unpatentable over Fujisawa in view of Skarica in view of Lemieux as applied to claim 12 above, and further in view of RFC 0793 (Transmission Control Protocol – Sept. 1981). Claim 18 was rejected under 35 USC 103(a) as being unpatentable over Fujisawa in view of Skarica in view of Lemieux as applied to claim 12 above, and further in view of Naudus (US 2002/0016837).

The rejection of claims 2, 3, 8, 10, 11 and 15-18 is based, in part, on the contention that Fujisawa, Skarica and/or Lemieux disclose or suggest the features of claims 1, 5, 12 and 22 from which such claims depend. However, in light of the above arguments with respect to claim 1, it is clear that the combination of Du, Brewer, Walke, Hamamoto, RFC 0793, and/or Naudus with Fujisawa, Skarica and/or Lemieux is legally deficient, since, at the very least, as explained above, neither Fujisawa, Skarica and/or Lemieux disclose or suggest the features of claim 1, from which claims 2, 3, 8, 10, 11 and 15-18 depend.

It is therefore respectfully submitted that the present invention is not disclosed or suggested by the cited references taken alone or in combination. Claims 1-22 are believed to be in condition for allowance for at least the reasons stated above. Early and favorable reconsideration of the case is respectfully requested.

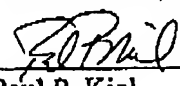
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### CONCLUSION

In view of the foregoing, Applicant respectfully requests that the rejections of the claims set forth in the Non Final Office Action mailed December 23, 2008 be withdrawn, that pending Claims 1-22 be allowed, and that the case proceed to early issuance of Letters Patent in due course.

It is believed that no additional fees or charges are currently due. However, in the event that any additional fees or charges are required at this time in connection with the application, they may be charged to applicant's representatives Deposit Account No. 07-0832.

Respectfully submitted,  
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